

KEEGAN, WERLIN & PABIAN, LLP

ATTORNEYS AT LAW  
265 FRANKLIN STREET  
BOSTON, MASSACHUSETTS 02110-3113

(617) 951-1400

TELECOPIERS:  
(617) 951-1354  
(617) 951-0586

DAVID S. ROSENZWEIG  
E-mail: drosen@kwplaw.com

February 11, 2004

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, Massachusetts 02110

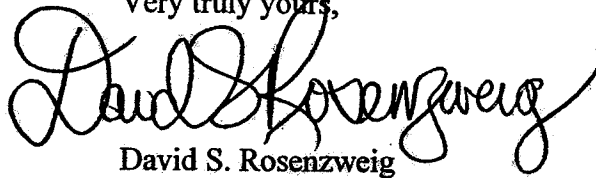
Re: D.T.E. 03-121, NSTAR Electric Standby Rate Tariffs

Dear Secretary Cottrell:

Enclosed for filing please find an original and nine (9) copies of NSTAR Electric Response to Petitions to Intervene in the above-referenced matter.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "David S. Rosenzweig", written in a cursive style.

David S. Rosenzweig

Enclosures

cc: William Stevens, Hearing Officer  
Service List

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

_____	)	
Boston Edison Company	)	
Cambridge Electric Light Company	)	D.T.E. 03-121
Commonwealth Electric Company	)	
d/b/a NSTAR Electric	)	
_____	)	

**CERTIFICATE OF SERVICE**

I certify that I have this day served the foregoing documents upon the service list in the above-docketed proceeding in accordance with the requirements of 220 C.M.R. 1.05.

  
\_\_\_\_\_  
Stephen H. August, Esq.  
Keegan, Werlin & Pabian, LLP  
265 Franklin Street  
Boston, MA 02110  
(617) 951-1400

Dated: February 11, 2004

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Boston Edison Company	)
Cambridge Electric Light Company	)
Commonwealth Electric Company	)
d/b/a NSTAR Electric	)

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D.T.E. 03-121

**NSTAR ELECTRIC RESPONSE TO PETITIONS TO INTERVENE**

**I. INTRODUCTION**

On January 16, 2004, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company d/b/a "NSTAR Electric (the "NSTAR Electric" or the "Company") submitted for approval tariffs designed to establish cost-based standby rates for large and medium-sized commercial and industrial customers who have their own on-site, self-generation facilities (e.g., distributed generation ("DG")). These rates are intended to provide firm distribution and optional generation services to supplement and/or to replace the unavailability of customers' generation resources.

On January 29, 2004, the Department of Telecommunications and Energy (the "Department") issued a Notice of Public Hearing and Procedural Conference that established a deadline of February 3, 2004, for petitions for leave to intervene in this proceeding (the "Notice"). According to the Notice, the Department will investigate, among other things, whether: (1) the proposed standby rates ensure that customers with their own on-site, self generation facilities pay an appropriate share of distribution system costs; (2) distribution companies should recover their costs through fixed or variable

charges; (3) standby rates should reflect embedded and/or incremental costs; and (4) distribution companies should offer firm and non-firm standby service. Notice at 1.

The following 19 entities submitted timely petitions to intervene or for limited participant status in this proceeding:

- |   |   |  |
|---|---|--|
| 1. Associated Industries of Massachusetts ("AIM")             | 7. Fitchburg Gas and Electric Company ("Fitchburg")                               | 13. Plug Power, Inc.   |
| 2. Attorney General of Massachusetts (the "Attorney General") | 8. Fuel Cell Energy, Inc. ("FCE")   | 14. Solar Energy Business Association of New England ("SEBANE")        |
| 3. Conservation Law Foundation ("CLF")                        | 9. KeySpan (seeks limited participant status)                                     | 15. UTC Power, LLC. ("UTC")  |
| 4. Division of Energy Resources ("DOER")                      | 10. Low-income weatherization and fuel assistance network and MASSCAP ("MASSCAP") | 16. Western Massachusetts Industrial Customers Group ("WMICG")         |
| 5. E Cubed Company and Joint Supporters ("E Cubed")           | 11. Massachusetts Electric Company ("MECo")                                       | 17. Western Massachusetts Electric Company ("WMECo")                   |
| 6. The Energy Consortium ("TEC")                              | 12. New England DG Coalition ("NEDGC")  | 18. Wyeth Pharmaceuticals ("Wyeth") (seeks limited participant status) |
|   |   | 19. Aegis Energy Services, Inc. ("Aegis")                              |

During the procedural conference, the Hearing Officer granted, without objection, the petitions to intervene of the Attorney General, AIM, DOER, TEC, Fitchburg, MASSCAP, MECo and WMECo (Tr. A, at 81-85). In addition, the requests for limited participant status of KeySpan and Wyeth were granted, without objection (Tr. A, at 80-81).

NSTAR Electric recognizes that, in this proceeding, the Department may make significant policy determinations regarding the design of standby rates and that it is therefore appropriate for those who have an interest in DG to participate in the case in

some manner. Although each of the still-pending petitioners for intervention has a general “interest” in this proceeding, particularly in relation to policies regarding the overall development of DG in Massachusetts, many of the petitions to intervene fail to allege or demonstrate the type of unique, direct or peculiar interest in the specific standby rates proposed by NSTAR Electric (i.e., that they will be substantially and specifically affected) that justifies full-party status in an adjudicatory proceeding (i.e., full rights to cross examine witnesses, submit discovery, offer testimony, etc.). Nor have several of these petitioners indicated their intention to do so. Indeed, many of the proposed intervenors are not NSTAR Electric customers at all. Instead, for the DG equipment suppliers, their interest is commercial in nature, concerning the sale and manufacture of commercial energy products and providing services to businesses in Massachusetts. For other advocacy groups who have petitioned to intervene, their concerns focus on the general policy issues associated with introducing a greater amount of DG in Massachusetts.

Although the issues raised by DG representatives and advocacy groups are no doubt significant, they are secondary to the Department’s primary responsibility to approve cost-based standby rates that are fair to all customers in this proceeding. Simply stated, NSTAR Electric submits that a general interest in a policy matter at issue in a case does not translate to a “substantial and specific” effect as is required in order to warrant full-party status. Accordingly, as described below, NSTAR Electric maintains that it would be appropriate for the Department to grant CLF, E Cubed, FCE, NEDGC, Plug

Power, SEBANE, UTC Power, WMICG and Aegis limited participant status so that they can be served with documents and provide further comments through post-hearing briefs.<sup>2</sup>

The Department has broad discretion in determining whether to allow participation, and the extent of participation, in its proceedings. Similar and overlapping commercial interests may properly be represented jointly or, in the case of customers, by the Attorney General or other related parties. Given the number of petitioners to intervene in this case and the time constraints imposed by statute for its resolution, "it is sometimes necessary to limit such participation in order to manage efficiently the time and limited resources of the Department." Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 14 (1999).

## II. STANDARD OF REVIEW

In conducting an adjudicatory proceeding, the Department "may allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose," as the Department may order. G.L. c. 30A, § 10(4).

Pursuant to 220 C.M.R. § 1.03(1)(b), a petition for leave to intervene in a Department proceeding must demonstrate how the petitioner is substantially and specifically affected by the proceeding. Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 8 (1999), citing 220 C.M.R.

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<sup>2</sup> It should be noted that limited participant status in this case is consistent with the status often granted to participants in "generic" proceeding conducted by the Department on broad policy questions.

§ 1.03(1)(b) and G.L. c. 30A, § 10. The Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Id. citing Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion). Tofias v. Energy Facilities Siting Board, 435 Mass. 340, 346 (2001) (This Court has repeatedly recognized that agencies have broad discretion to grant or deny intervention).

When ruling on a petition to intervene or participate, a Hearing Officer may consider, among other factors:

The interests of the petitioner, whether the petitioner's interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner's intervention on the proceeding, and the nature of the petitioner's evidence, including whether such evidence will help to elucidate the issues of the proceeding, and may limit intervention and participation accordingly.

Boston Edison Company, D.P.U. 96-23, at 10 (citations omitted). In Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667, 672 (1975), the court expressed its concern that "the multiplicity of parties and the increased participation by persons whose rights are at best obscure will, in the absence of exact requirements as to standing, seriously erode the efficacy of the administrative process."

It is not enough that a petitioner is a customer of an electric or gas company; an individual customer must allege "peculiar damage" for full-party status. Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 11-12, 14 (1999), citing Robinson v. Department of Public Utilities, 416 Mass. 668, 673-674 (1993); Attorney General v. Department of Public Utilities, 390 Mass. 208, 216-217, n.7

(1983). The Attorney General has the statutory obligation to represent the customers of electric and gas companies. Eastern Edison Company, D.P.U. 96-24, at 6 (1997). Accordingly, a petitioner must demonstrate that its interests as a customer are not otherwise adequately represented by the Attorney General or another party in order to obtain full-party status. Boston Edison Company, D.P.U. 97-63, at 16 (1997); Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 15.

In ruling on a petition to intervene, the Department primary task is to assess how the proposal before the Department might affect an electric or gas company's customers as ratepayers. See Cablevision Systems Corp. v. Department of Telecommunications and Energy, 428 Mass. 436 (1998) (Department did not commit error of law in concluding that its statutory obligation did not require it to consider the consequences of competition). "Our cases have recognized that the [D]epartment's task, assigned by the Legislature, is the "protection of ratepayers." Id. at 438-439. See Tofias v. Energy Facilities Siting Board, 435 Mass. 340 (2001) (Where claim for intervention was based on purely economic issues, property owner failed to identify a specific and substantial interest warranting intervenor status). See also Newton v. Department of Public Utilities, 339 Mass. 535, 543 n.1 (1959) ("The discretion to limit intervention was obviously intended to permit the [D]epartment to control the extent of participation by persons not sufficiently and specifically interested to warrant full participation, which might interfere with complicated regulatory processes").

The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. Id., citing G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass. at 45. A petitioner must demonstrate a sufficient

interest in a proceeding before the Department will exercise its discretion and grant limited participation. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/98-119/126, at 8.

Although the Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes, it is sometimes necessary to limit such participation in order to manage efficiently the time and limited resources of the Department. As [Citizens Urging Responsible Energy]'s concerns may be adequately addressed by the Attorney General, limited participant status is not warranted in this proceeding.

Id. at 14.

### **III. ARGUMENT**

#### **A. Conservation Law Foundation**

CLF, a “non-profit, member supported, advocacy organization,” maintains that it has an “intense interest” in the development of new electricity generation capacity, especially generation employing renewable energy technology (CLF Petition at 1). However, CLF has not demonstrated how it would be substantially and specifically affected by this proceeding, as required by 220 C.M.R. § 1.03(1)(b) and G.L. c. 30A, § 10. Instead, CLF’s interest in this case appears to be one of advocacy for particular public policies that encourage renewable energy technologies. Although CLF may have a generalized interest in policies relating to renewable forms of distributed generation, it has not established how it has a unique, direct or peculiar interest in the proposed standby rates of NSTAR Electric. Accordingly, because CLF has failed to demonstrate that it will be substantially and specifically affected by this proceeding, the Department should allow

CLF limited participant status, for the purpose of filing comments and briefs in accordance with the procedural schedule established by the Hearing Officer.<sup>3</sup>

**B. E Cubed Company, L.L.C. and the “Joint Supporters”**

E Cubed describes itself as a Delaware corporation that provides “strategic energy services” including assistance in deploying “distributed energy resource investments” (E Cubed Petition at 1). E Cubed, on behalf of itself and the Joint Supporters, a voluntary association of unnamed “end-users and providers of competitive energy services, including manufacturers, developers, fuel suppliers, operators and users of on-site generation and performance contracting,” request leave to intervene in this proceeding (*id.* at 2). They maintain that they will be substantially and specifically affected by this proceeding “because existing and potential end users of on-site generation will find their mode and cost of operations potentially affected” (*id.* at ¶ 4). Although E Cubed and the Joint Supporters may have a generalized interest in distributed generation, they have failed to establish how E Cubed has a unique, direct or peculiar interest in the proposed standby rates of NSTAR Electric. Accordingly, E Cubed’s sole interest in this case is a commercial one, which the Department has previously held to be insufficient for full-party status. Boston Edison Company, D.P.U. 97-63, at 16 (1997) (Cablevision is not substantially and specifically affected where its claims arise out of status as competitor, not as a ratepayer).

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<sup>3</sup> At the procedural conference, counsel for CLF asserted that many of its members may be customers of NSTAR Electric (Tr. A, at 87). Assuming that some percent of CLF membership are NSTAR Electric customers, their customer-based interests are no different from other customers, whose interests are already being represented in this case by the Attorney General, AIM, TEC and MASSCAP.

In addition, E Cubed and the Joint Supporters have not identified any of its members as actual customers of NSTAR Electric and are not represented by counsel, but instead by E Cubed's president, Ruben Brown.<sup>4</sup> The Department has rejected efforts by non-lawyers to represent the interests of others, including corporations. Western Massachusetts Electric, D.T.E. 01-36/02-20, at 7 (2003).

[I]n Varney Enterprises, Inc. v. WMF, Inc., 402 Mass. 79 (1988), the Court held that, with the exception of small claims matters, a corporation may not be represented in judicial proceedings by a corporate officer who is not an attorney licensed to practice law in the Commonwealth.

Id. E Cubed and the Joint Supporters thus have not demonstrated that they are substantially and specifically affected by this proceeding. E Cubed and the Joint Supporters also have not demonstrated that they are NSTAR customers, or if so, why their interests cannot adequately be represented by DOER or other parties. Accordingly, the Department should reject the E Cubed and the Joint Supporters petition to intervene in this case, but grant E Cubed and the Joint Supporters the opportunity to be limited participants in the case so that they may file comments and briefs in accordance with the procedural schedule.

### **C. Fuel Cell Energy, Inc.**

FCE describes itself as a "world leader in the development and manufacture of high temperature hydrogen fuel cells" who will be substantially and specifically affected by this proceeding because the proposed standby tariffs will impose costs on projects that are under development and planned by FCE" (FCE Petition at 2). FCE is not a customer of NSTAR Electric and FCE does not identify any of its "projects" being developed or

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<sup>4</sup> The Hearing Officer granted E-Cubed until Friday to designate counsel to represent the company. However, even if is represented by counsel, it does not excuse the insufficiency of its petition to intervene and the fact that its "interests" in this case are not of a full party.

planned specifically for NSTAR Electric customers. Instead, FCE's interest in this case appears to be broadly on behalf of the fuel cell industry. Although FCE may have a generalized interest in policies relative to distributed generation and fuel cells, it has not established how it has a unique, direct or peculiar interest in the proposed standby rates of NSTAR Electric. FCE's sole interest in this case is a commercial one, which the Department has previously held to be insufficient for full-party status. Boston Edison Company, D.P.U. 97-63, at 16 (1997) (Cablevision is not substantially and specifically affected where its claims arise out of status as competitor, not as a ratepayer). Accordingly, because FCE has failed to demonstrate that it will be substantially and specifically affected by this proceeding, the Department should grant FCE limited participant status, for the purpose of filing comments and briefs in accordance with the procedural schedule.

**D. New England DG Coalition**

NEDGC indicates that it is a an "informal group" of eight entities, each of which is "involved in the business of developing, owning, operating, providing equipment, or supplying services related to on-site electricity generating facilities" (NEDGC Petition at 1). According to NEDGC, its members will be "directly and substantially affected" by the proceeding because several members have existing DG systems in NSTAR Electric's service territory, with several other projects in development (*id.* at 4). NEDGC does not identify any of its eight entities as customers of NSTAR Electric. Instead, by their own description, NEDGC members are commercial developers of equipment or services being provided to businesses in New England. Although NEDGC may have a generalized interest in the sale and manufacture of distributed generation equipment, it has not

established how it has a unique, direct or peculiar interest in the proposed standby rates of NSTAR Electric. Accordingly, NEDGC's sole interest in this case is a commercial one, which the Department has previously held to be insufficient for full-party status. Boston Edison Company, D.P.U. 97-63, at 16 (1997) (Cablevision is not substantially and specifically affected where its claims arise out of status as competitor, not as a ratepayer). Absent any showing of a substantial and specific interest in this case, the Department should allow NEDGC limited participant status, entitling NEDGC to receive pleadings, attend hearings and file briefs.

**E. Plug Power, Inc.**

Plug Power identifies itself as a Latham, New York designer, developer and manufacturer of on-site energy generation systems (Plug Power Petition at 1). Plug Power seeks permission to intervene in this proceeding because NSTAR Electric's proposed standby rates have "the potential to affect the return on investment for on-site generation projects utilizing Plug Power fuel cells" (Plug Power Petition at 1). Rather than having a substantial and specific interest in NSTAR Electric's proposed tariffs, Plug Power's interest in this case is speculative at best because it has not identified any existing or planned projects in NSTAR Electric's service territory. Nor is Plug Power, which is located in New York, a customer of NSTAR Electric. Plug Power's sole interest in this case is a commercial one, which the Department has previously held to be insufficient for full intervenor status. Boston Edison Company, D.P.U. 97-63, at 16 (1997) (Cablevision is not substantially and specifically affected where its claims arise out of status as competitor, not as a ratepayer). Although Plug Power may have a generalized interest in the sale and manufacture of distributed generation equipment, it

has not established how it has a unique, direct or peculiar interest in the proposed standby rates of NSTAR Electric. Absent any showing of a substantial and specific interest in this case, the Department should allow Plug Power limited participant status, entitling Plug Power to receive pleadings, attend hearings and file briefs.

**F. Solar Energy Business Association of New England**

According to its petition to intervene, SEBANE's member companies manufacture photovoltaic ("PV") modules, inverters and related equipment, develop PV projects, and design and install PV systems. SEBANE maintains that NSTAR Electric's proposed standby rates would affect the ability of SEBANE members to do business in Massachusetts, but SEBANE fails to identify its member companies in its petition, nor does it assert that its member companies are either customers of NSTAR Electric or are doing business with NSTAR Electric customers. To the extent that SEBANE is doing business with NSTAR Electric customers (a fact that is not included in its pleading), SEBANE's sole interest in this case is a commercial one, which the Department has previously held to be insufficient for full intervenor status. Boston Edison Company, D.P.U. 97-63, at 16 (1997) (Cablevision is not substantially and specifically affected where its claims arise out of status as competitor, not as a ratepayer). Although SEBANE may have a generalized interest in distributed generation and related policies, it has not established how it has a unique, direct or peculiar interest in the proposed standby rates of NSTAR Electric. Absent any showing of a substantial and specific interest in this case, the Department should allow SEBANE limited participant status, entitling SEBANE to receive pleadings, attend hearings and file briefs.

#### **G. UTC Power, LLC**

UTC Power, a division of United Technologies Corporation, states that it is developing “a range of products in the distributed generation market” (UTC Petition at 1). UTC Power seeks permission to intervene in this proceeding because “standby rates and their structure will directly affect UTC Power’s business in the Commonwealth” (*id.*). UTC has not identified any of its customers that are located in NSTAR Electric’s service territory. Nor is UTC Power a customer of NSTAR Electric. Rather, UTC Power’s sole interest in this case is a commercial one, which the Department has previously held to be insufficient for full intervenor status. Boston Edison Company, D.P.U. 97-63, at 16 (1997) (Cablevision is not substantially and specifically affected where its claims arise out of status as competitor, not as a ratepayer). Although UTC Power may have a generalized interest in the sale and manufacture of distributed generation equipment, it has not established how it has a unique, direct or peculiar interest in the proposed standby rates of NSTAR Electric. Absent any showing of a substantial and specific interest in this case, the Department should allow UTC Power limited participant status, entitling UTC Power to receive pleadings, attend hearings and file briefs.

#### **H. Western Massachusetts Industrial Customers Group**

WMICG consists of three companies, General Electric Company, MeadWestvaco Corporation and Solutia, Inc. These three companies are each located in the service territory of WMECo and are not customers of NSTAR Electric (Petition at 1). WMICG has not shown how it will be substantially and specifically affected by this proceeding other than the existence of an “ongoing interest.” Moreover, the interests of WMICG are

not unique or peculiar in that similar entities representing large commercial and industrial customers, such as AIM and TEC (whose membership includes significant numbers of NSTAR Electric customers), have sought and already have been granted full-party status by the Hearing Officer. Accordingly, absent any showing of a substantial and specific interest in this case, the Department should allow WMICG only limited participant status, entitling WMICG to receive pleadings, attend hearings and file briefs.

#### **I. Aegis**

Aegis describes itself as specializing in the design, installation and maintenance of small (<75 kW) modular combined heat and power units. (Aegis Petition at 1). Aegis seeks permission to intervene in this proceeding because NSTAR Electric's proposed standby rates "could have a direct impact on the cogeneration portion of the [DG] markets in Massachusetts." *Id.* Rather than having a substantial and specific interest in NSTAR Electric's proposed tariffs, Aegis's interest in this case is speculative at best because it has not identified any existing or planned projects in NSTAR Electric's service territory. Nor does Aegis indicate that it is a customer of NSTAR Electric. As is evident from its petition to intervene, Aegis is not represented by counsel.

Aegis's sole interest in this case is a commercial one, which the Department has previously held to be insufficient for full intervenor status. Boston Edison Company, D.P.U. 97-63, at 16 (1997) (Cablevision is not substantially and specifically affected where its claims arise out of status as competitor, not as a ratepayer). Although Aegis may have a generalized interest in the sale and manufacture of distributed generation equipment, it has not established how it has a unique, direct or peculiar interest in the proposed standby rates of NSTAR Electric. Absent any showing of a substantial and

specific interest in this case, the Department should allow Aegis limited participant status, entitling Aegis to receive pleadings, attend hearings and file briefs.

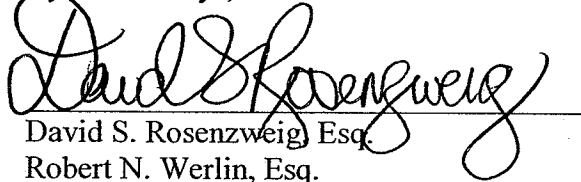
#### **IV. CONCLUSION**

For the foregoing reasons, NSTAR Electric requests that the Department grant limited participant status to CLF, E Cubed, FCE, NEDGC, Plug Power, SEBANE, UTC Power, WMICG and Aegis.

Respectfully submitted,

**Boston Edison Company  
Cambridge Electric Light Company  
Commonwealth Electric Company  
d/b/a NSTAR Electric**

By its attorneys,

A handwritten signature in cursive script, appearing to read "David S. Rosenzweig", is written over a horizontal line.

David S. Rosenzweig, Esq.  
Robert N. Werlin, Esq.  
Stephen H. August, Esq.  
Keegan, Werlin & Pabian, LLP  
265 Franklin Street  
Boston, MA 02110  
(617) 951-1400

Dated: February 10, 2004